

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

VICTOR MANUEL PAREDES-RIVAS
a/k/a VICTOR RIVERA

Defendant

CRIMINAL 05-0400CCC

ORDER

Having considered the Statement of Objections to Pre-Sentence Report filed by defendant Víctor Paredes-Rivera on April 20, 2006 (**docket entry 22**) and the Second Addendum to the Pre-Sentence Report filed by U.S. Probation Officer Víctor Carlo-Chévere on April 21, 2006 (**docket entry 23**), the Court adopts the interpretations of 21 U.S.C. §802(13) made by the courts in United States v. Gómez-Ortiz, 62 F.Supp.2d 508 (D.R.I. 1999) and United States v. Brooke, 416 F.Supp.2d 397 (D. Md. 2006), instead of following the contrary interpretation made by the Court of Appeals for the Second Circuit in United States v. Simpson, 319 F.3d 81 (2nd Cir. 2002), and RULES that defendant's misdemeanor conviction under New York law does not qualify as a "felony" under the Controlled Substances Act, 21 U.S.C. §801 et. seq., or as an "aggravated felony" under U.S.S.G. §2L1.2(b)(1)(c). Accordingly, defendant's objection to the eight-level upward adjustment applied under U.S.S.G. §2L1.2(b)(1)(c) is SUSTAINED. Defendant's total offense level is now six (6), with an advisory guideline sentencing range of from zero (0) to six (6) months.

SO ORDERED.

At San Juan, Puerto Rico, on April 25, 2006.

S/CARMEN CONSUELO CEREZO
United States District Judge